The contention of the plaintiffs is that if they had not given the replacement shares from their stock to Lee Ah Bee they would have received the bonus issues and the dividends in respect of the replacement shares. They submit that their loss would be in all $19,000.

I agree with counsel for the second defendant that the only loss suffered by the plaintiffs is the loss of the value of the shares which amounted to $10,000. The plaintiffs, in respect of Certificate No. 89407, have not lost the bonus issues and the dividends. In the normal course of events the replacement shares would have been sold by the plaintiffs and not kept by them to earn the bonus issues and the dividends.

I assess damages at $10,000.

In the result there will be judgment for the plaintiffs with costs. The counterclaim of the second defendant is dismissed with costs.

There will be an order that the second defendant deliver to the plaintiffs the share Certificate No. 89407 together with the relative transfer form and that the plaintiffs are entitled to the bonus issues and the dividends declared. There will also be an order that the second defendant pay to the plaintiffs $10,000 damages.

Order accordingly.

Solicitors: *Ng Kian Fong & Co., Chor Pee & Co.*

SIM LENG CHUA v. J.E. MANGHARDT

[A.C.J. (Chan Sek Keong J.C.) February 18, 1987]
[Singapore – Suit No. 336 of 1986]

Practice and Procedure – Application to strike off plaintiff's action – Abuse of process of court – Applicability of "Riddick principle" – R.S.C. 1970 O.18 r.19.

Practice and Procedure – Discovery – Documents – Defamatory remarks in – Whether private interest of plaintiff prevails against public interest.

In Suit No. 4049 of 1982 the plaintiff in this action sued a company called Interfood for certain remedies. During the course of discovery of documents in that suit, the plaintiff discovered certain defamatory remarks made by the present defendant to a third party about the plaintiff. The plaintiff then sued the defendant for damages for defamation. The defendant applied to strike out, on the ground of abuse of process of court, the action of the plaintiff for damages for defamation. The Assistant Registrar dismissed the application. The defendant appealed.

The main ground of appeal was whether the principle in *Riddick* v. *Thames Board Mill Ltd.*(1) applied to the present case. The *Riddick* principle states that "Public interest requires that documents disclosed on discovery are not to be made use of except for the purpose of the action in which they are disclosed."

Held: (1) the private interest of the plaintiff did not prevail against the public interest;

(2) if there were a public interest in his being allowed to litigate or enforce his rights in court, it would not override the public interest in full and frank disclosure in discovery proceedings;

(3) the action should be struck out on the ground that it was an abuse of process of court.

Cases referred to:

(1) *Riddick* v. *Thames Board Mills Ltd.* [1977] 3 All E.R. 677; [1977] Q.B. 881; [1977] 3 W.L.R. 63.
(2) *Williams and Humbert Ltd.* v. *W&H Trade Marks (Jersey) Ltd.* [1986] 2 W.L.R. 24.
(3) *Hubbuck & Sons Ltd.* v. *Wilkinson* [1899] 1 Q.B. 86.
(4) *Medway* v. *Doublelock Ltd.* [1978] 1 W.L.R. 710.
(5) *Halcon International Inc.* v. *The Shell Transport & Trading Co.* [1979] R.P.C. 97.
(6) *Church of Scientology of California* v. *Department of Health and Social Security* [1979] 1 W.L.R. 723.
(7) *Rank Film Ltd.* v. *Video Centre* [1981] 2 W.L.R. 668.
(8) *Norwich Pharmacal Co. & Ors.* v. *Customs & Excise Commissioners* [1974] A.C. 133.
(9) *Sony Corpn.* v. *Time Electronics* [1981] 3 All E.R. 376.
(10) *Home Office* v. *Harman* [1982] 1 All E.R. 532.
(11) *Sybron Corporation* v. *Barclays Bank PLC* [1985] 1 Ch. 299.
(12) *The Distillers Co. (Biochemicals) Ltd.* v. *Times* [1975] 1 All E.R. 41.

APPEAL FROM REGISTRAR.

Pauline Tan for the plaintiff.
Margaret Neo for the defendant.

Cur. Adv. Vult.

Chan Sek Keong J.C.: This is an appeal by the defendant against the decision of the Assistant Registrar dismissing his application to strike out, on the ground of abuse of process of court, the action of the plaintiff for damages for defamation. The action arose in the following circumstances. In Suit No. 4049 of 1982 ("the Interfood action," which is currently part-heard), the plaintiff in this action as plaintiff in that action sued Interfood Ltd ("Interfood") a company in which the defen-

dant in this action was, at all material times, the "director-general adjoint," for damages for breach of contract and for procuring another party, *viz.* Khee San Food Industries Sdn. Bhd. ("Khee San"), to breach its contract with the plaintiff. The claims in the Interfood action are not relevant to the claim in this action except to the extent that they provided the occasion for the alleged defamatory statements to come to light. What happened was that pursuant to the usual orders for discovery of documents made in that action, Interfood disclosed amongst its documents a letter dated March 25, 1982, written to Dato Yan Kok Hian, the managing director of Khee San. The letter was written on paper bearing the letterhead of Interfood with the name of the defendant on the top left hand corner, and the designation "director general adjoint" underneath his name. The letter was signed by the defendant without indicating whether he wrote the letter in his private capacity or as an officer of Interfood.

The said letter contained the following statements:

"(1) Agreement between your company and Messrs Rene Scheidegger and Sim Leng Chua.

I cannot help telling you how upset and disappointed I was on reading this document. These gentlemen deliberately avail themselves of the international renown of our trademark 'Sugus' and know-how to induce you to sign this agreement for an unlimited period of time, thereby granting both of them an allowance of 3% not only on the Sugus sales but also on all Interfood products."

"(2) I deeply regret that you did not consult us at the time. I can assure you that we would have then spoken very sharply to these gentlemen who turn out to be nothing else but racketeers!"

In view of these defamatory statements, the plaintiff commenced this action against the defendant. It is to be noted that the plaintiff has elected not to sue Interfood as the party responsible for the libel. Presumably he has been advised by his solicitors that to do so would meet with immediate dismissal by reason of the decision of the Court of Appeal in England in *Riddick* v. *Thames Board Mills Ltd.*,[1] which applied a general principle that "public interest requires that documents disclosed on discovery are not to be made use of except for the purpose of the action in which they are disclosed" (per Lord Denning at page 687). For convenience, I shall hereafter refer to this as the *Riddick* principle.

Undaunted by this tactic, the defendant made an application to strike out the action against him on the ground that the *Riddick* principle was equally applicable to civil proceedings against a third party arising out of such discovery. Counsel for the plaintiff however contended that the *Riddick* principle was limited in its operation to use of such information against the same party or the parties to the action where discovery was given. It was further contended that if the *Riddick* principle extended to the use of such information against third parties, the court has a discretion and ought to allow the plaintiff to pursue this action against the defendant.

Before I examine the rationale and scope of the *Riddick* principle, I should deal first with a preliminary point raised by counsel for the plaintiff concerning the scope of Order 18 r.19 of the Rules of the Supreme Court 1970, under which this application was made. It was contended by counsel for the plaintiff that since the issues raised in the application would involve prolonged and serious argument, they would more appropriately have been the subject of an application under Order 33 r.3 as preliminary questions of law and for that reason I should decline to hear the appeal. Counsel referred to *Williams and Humbert Ltd.* v. *W&H Trade Marks (Jersey) Ltd.*[2] where Lord Templeman, in reference to the observations of Lindley M.R. in *Hubbuck & Sons Ltd.* v. *Wilkinson*[3] (at p. 91):

"Two courses are open to a defendant who wishes to raise the question whether, assuming a statement of claim to be proved, it entitles the plaintiff to relief. One method is to raise the question of law as directed by Ord. xxv, r.2; the other is to apply to strike out the statement of claim under Ord. xxv, r.4. The first method is appropriate to cases requiring argument and careful consideration. The second and more summary procedure is only appropriate to cases which are plain and obvious, so that any master or judge can say at once that the statement of claim as it stands is insufficient, even if proved, to entitle the plaintiff to what he asks."

said that these observations although directed to striking out a statement of claim applied equally to applications to strike out a defence or part of a defence. His Lordship then went on to state (at page 37) that:

"... if an application to strike out involves a prolonged and serious argument the judge should, as a general rule, decline to proceed with the argument unless he not only harbours doubts about the soundness of the pleading but in addition, is satisfied that striking out will obviate the necessity for a trial or will substantially reduce the burden of preparing for trial or the burden of the trial itself."

Lord Mackay delivered a concurring judgment and stated the general rule as follows (at page 42):

"If on an application to strike out it appears that a prolonged and serious argument will be necessary there must at the least, be a serious risk that the court time, effort and expense devoted to it will be lost since the pleading in question may not be struck out and the whole matter will require to be considered anew at the trial. This consideration, as well as the context in which Ord. 18, r.19 occurs and the authorities upon it, justifies a general rule that the judge should decline to proceed with the argument unless he not only considers it likely that he may reach the conclusion that the pleading should be struck out, but also is satisfied that striking out will obviate the necessity for a trial or will so substantially cut down or simplify the trial as to make the risk of proceeding with the hearing sufficiently worth while."

In *Williams & Humbert* itself, the House of Lords held that the judge was justified by the very special circumstances in that case to proceed to hear the application (although it involved the applicability of international law and the admissibility of allegations against the Spanish Government which has passed expropriatory decrees in 1983) to strike out parts of the defence. The special circumstances were that the application was heard in open court; both parties were well apprised of the serious and lengthy questions involved and were armed with leading counsel and the appropriate authorities; if the application had been heard as an Order 33 r.3 application, it would have taken a similar amount of time; and on the whole, no harm had been done.

I considered this preliminary point and decided to proceed to hear the appeal for the following reasons: (1) the circumstances here were substantially similar to those in *Williams & Humbert*, save for the absence of leading counsel, which is a normal occurrence in our courts in any case; (2) the point of law involved, was a short one involving the scope of the *Riddick* principle and the time taken to hear arguments on it would be no more than would have been required if they were heard under an Order 33 r.3 application; (3) the hearing took place just before the December vacation and I was prepared to make time available for counsel to argue the matter fully during vacation; (4) counsel for the plaintiff should have made this submission before the Assistant Registrar, but not having done so and having succeeded before him it would be unfair to the defendant to preclude him from proceeding with his appeal.

In *Riddick's* case, the issue was whether the defendants' staff report on Riddick disclosed in an action brought by him against the defendants for damages for wrongful dismissal could be used in a subsequent action against the same defendants for damages for defamation based on the report so disclosed. The Court of Appeal held that he was not entitled to use the report for the said purpose. Lord Denning, in his judgment (at pages 687-88), gave the following reasons.

"Discovery of documents is a most valuable aid in the doing of justice ... .

The reason for compelling discovery of documents in this way lies in the public interest in discovering the truth so that justice may be done between the parties. That public interest is to be put into the scales against the public interest in preserving privacy and protecting confidential information. The balance comes down in the ordinary way in favour of the public interest of discovering the truth, *i.e.* in making full disclosure. This balancing act, of weighing the competing public interests, is what I advocated in my judgment in *D.* v. *National Society for the Prevention of Cruelty to Children.*

I proceed to hold the balance in the present case. On the one hand discovery has been had in the first action. It enabled that action to be disposed of. The public interest there has served its purpose. Should it go further so as to enable the memorandum of April 16, 1969 to be used for this libel action? I think not. The memorandum was obtained by compulsion. Compulsion is an invasion of a private right to keep one's documents to oneself. The public interest in privacy and confidence demands that this compulsion should not be pressed further than the course of justice requires. The courts should, therefore, not allow the other party, or anyone else, to use the documents for any ulterior or alien purpose. Otherwise the courts themselves would be doing injustice. Very often a party may disclose documents, such as inter-departmental memoranda, containing criticisms of other people or suggestions of negligence or misconduct. If these were permitted to found actions of libel, you would find that an order for discovery would be counter-productive. The inter-departmental memoranda would be lost or destroyed or said never to have existed. In order to encourage openness and fairness, the public interest requires that documents disclosed on discovery are not to be made use of except for the purpose of the action in which they are disclosed. They are not to be made a ground for comments in the newspapers or for bringing a libel action or for any alien purpose."

Riddick's case was decided in 1977 and involved the same parties as in the earlier action but in respect of a different cause of action. Since then the *Riddick* principle has been closely examined in its application to various situations. I will now refer to some of them.

In *Medway* v. *Doublelock Ltd.*[4] the Chancery Division granted an injunction to stop evidence being given of the property and income of the husband given by him in the Family Division pursuant to an order of court in an application for security for costs in an action pending in the Queen's Bench Division. Goulding J. said that the court had to weigh the public interest served by

the disclosure of information as to means made under compulsion by a husband in a matrimonial suit in the Family Division of the High Court against the public interest served by the use of that disclosure in proceedings for security for costs in an action concerning a company in which he was interested in another division of the High Court. His Lordship then concluded that, on balance, the giving of security for costs was a minor matter of litigation compared with proceedings involving marital status and confidential disclosures which it was in the public interest to protect. The defendants were accordingly restrained from making use of the copy affidavits of the husband filed in the matrimonial suit.

In *Halcon International Inc.* v. *The Shell Transport & Trading Co.*[5] Whitford J., whose decision was affirmed on appeal, refused to allow the plaintiffs to use certain documents in other proceedings involving the same defendants in the Netherlands, in circumstances where the documents, although not confidential, had been released to the plaintiffs in discovery proceedings in the English action, but if released in the Dutch proceedings would involve the defendants having to release other confidential documents in order to explain or clarify these non-confidential documents and where, under Dutch law, all such documents would then be available to the public without restriction. Whitford J. stated the principle as follows:

"However, these authorities [i.e. *Alterskye* v. *Scott* [1948] 1 All E.R. 469, *Distillers Co (Biochemical) Ltd.* v. *Times Newspapers Ltd.* [1975] Q.B. 613; *Riddick's* case] to my mind, lead to the conclusion that the use of a document disclosed in a proceeding in some other context, or even in another proceeding between the same parties in the same same jurisdiction, is an abuse of process unless there are very strong grounds for making an exception to the general rule. It does, I think, emerge that some overriding public interest might be a good example, but not the mere furtherance of some private interest even where that private interest arises directly out of or is brought to light as a result of the discovery made."

Waller L.J. in the Court of Appeal said [at page 124]:

"The modern authorities on this point have been quoted. They are three in number. It is worth pointing out that, with the exception of the last case, *Riddick* v. *Thames Board Mills Ltd.* [1977] Q.B. 887, all the reported cases, including most of those in the 19th century, concern a third party: for example, whether it is permissible to communicate to a representative of the Ministry of Food (in the case of *Alterskye* v. *Scott* [1948] 1 All E.R. 469, or whether it is permissible to allow a sale to a newspaper with a national circulation (*Distillers Company* v. *Times Newspapers Ltd.* [1975] Q.B. 613). Indeed, except in the special circumstances of the case of *Riddick* where the plaintiff was seeking damages in a new action for defamation based on a document disclosed in an earlier action, it is difficult to imagine a case where the parties in this country would be the same. The question would not arise because discovery would be granted in the second action."

In *Church of Scientology of California* v. *Department of Health and Social Security*[6] the plaintiffs brought libel actions against the defendants and two of their officers over various letters written by the defendants to foreign health authorities and the press about the plaintiffs' treatment of mentally sick members. Amongst the defendants' documents were medical records of patients and letters written about the plaintiffs. The defendants objected to the disclosure on grounds of confidentiality. The master restricted disclosure of the letters to the plaintiffs' solicitors and counsel, to be used only for the conduct of the action, and of the medical reports to a registered medical practitioner who had undertaken not to disclose their contents. The plaintiffs appealed. The defendants argued that the plaintiffs had begun many actions to suppress their critics and that they would harass the makers of the documents. The Court of Appeal held that (1) although a party to an action had *prima facie* an unrestricted right to inspect the other party's documents, that right was only for the purposes of the action, and, where there was a real risk of a party using matters disclosed on inspection for a collateral purpose, the court could restrict inspection under its inherent jurisdiction to prevent an abuse of the process of the court; (2) although no successful libel action could be brought based on matters disclosed on discovery and such action would be in contempt of court, there was a real risk in the present case that individuals would be subjected to harassment; that in those circumstances the court would place restrictions on the plaintiffs to control the manner in which the documents were disclosed to the persons acting on their behalf but, since the terms of the master's order were too restrictive, the court would substitute an order in the terms agreed between the parties.

In *Rank Film Ltd.* v. *Video Centre*[7] the House of Lords held that the *Riddick* principle would not prohibit the admissibility in criminal proceedings of answers or documents extracted in civil proceedings. Lord Fraser of Tullybelton (at page 677 of his judgment) said that the *Riddick* principle would have to be extended to include cases such as *Norwich Pharmacal Co. & Ors.* v. *Customs & Excise Commissioners*[8] where an order was made for discovery of information for the

purpose of its being used in another purpose. His Lordship then reformulated the principle in these terms (at page 679):

"The principle is ... that information is not to be used by the party who gets discovery for purposes other than that for which production was ordered."

In *Sony Corpn.* v. *Time Electronics*[9] the evidence on which the plaintiffs relied upon to sue the defendants was held to have been obtained from an independent source although it was obtained in connection with discovery proceedings. In that case, the plaintiffs obtained, *inter alia,* an order against the defendant for delivery up of the counterfeit goods. While serving the order, the plaintiffs' solicitor discovered on the defendant's premises goods of a second type which were also manufactured by the plaintiffs. He instructed one of his firm's employees to make a test purchase of the second type of goods which were easily obtainable and clearly imitations of the plaintiffs' goods. The plaintiffs sought a further order to restrain the defendant trading in the second type of goods and other consequential orders. Goulding J. granted the order, holding that the new action was not founded on something that the court had ordered to be disclosed in the earlier order but on the evidence which had been obtained on the test purchase, that the observation by the solicitor of the suspect goods was merely collateral to the execution of that order and did not depend on that order for its justification.

In *Home Office* v. *Harman,*[10] the House of Lords held that a solicitor who had on behalf of a party to civil litigation obtained documents by way of discovery was under a duty not to use or allow such documents for any collateral or ulterior purpose of her own, her clients or any one else's and that such duty did not terminate when the documents were read out in open court in the course of the litigation for which it had been produced, because if that were the case full and frank discovery of documents before trial would be discouraged and the proper administration of justice would be impeded by the parties attempting to ensure that the particular documents were or were not read out in court. The solicitor concerned, who had given her undertaking to the court not to release the documents, was held guilty of contempt for having disclosed some of them to a journalist who then wrote and published a critical article based on the said documents.

In *Sybron Corporation* v. *Barclays Bank PLC*[11] ("the 1983 action") the plaintiffs sued the defendants for damages for conspiracy arising from certain information obtained by the plaintiffs in an action commenced in 1974 ("the main action") in which the plaintiffs obtained judgment from Walton J. against R. Ltd and two associated companies and 10 individual defendants in respect of a fraudulent conspiracy organised by senior employees of the plaintiffs whereby, whilst still in the plaintiffs' employment, they set up a rival trading organisation in the form of the three defendant companies, made use of the plaintiffs' trade secrets and confidential information and diverted customers and business from the plaintiffs to the defendants' companies.

In the main action, the plaintiffs had obtained an order under the Bankers' Books Evidence Act 1879 pursuant to which a bank employee attended court under *subpoena duces tecum* and produced certain bank documents related to the bank accounts operated by the bank on behalf of the defendant companies. Some of the said documents were referred to and read out by Walton J. in giving judgment in the main action. In reliance upon these documents, the plaintiffs commenced an action against the bank ("the 1981 action") in which they alleged that the bank, in agreeing to provide banking services for the defendant companies, had become a party to the fraudulent and dishonest conspiracy which Walton J. found to exist. The documents produced under the subpoena and further documents were disclosed by the bank on discovery in the 1981 action. After inspection of the documents, the plaintiffs decided to add another 9 of their associated companies as plaintiffs and 3 of the bank employees as defendants. In view of possible difficulties which might arise in connection with the Limitation Act 1980 if the parties were joined to the 1981 action, the plaintiffs commenced the 1983 action. The plaintiffs applied for leave, if such leave were necessary, to refer in the 1983 action to the documents discovered in the 1981 action. Scott J. made the following findings: (1) the implied undertaking imposed upon the plaintiffs as a result of discovery of documents by the defendant bank ordered by the court in the 1981 action or as a result of the production on *subpoena duces tecum* in the main action prevented the plaintiffs, as a party to whom they were disclosed or to whom they were produced, from making use in any other proceeding, of these documents or of any information contained therein without leave of the court having been first obtained, unless such information was obtained from a wholly independent source; (2) the protection of that undertaking by them was not

lost by the fortuitous reading thereof by Walton J. in open court; (3) the causes of action in 1983 action were the same as the 1981 action and the plaintiffs ought to have leave to use the documents for the purposes of 1983 action. At pages 327-382 of his judgment, Scott J. said:

"I come back, therefore, to Mr. Brodie's second proposition, the causes of action in the 1981 action and the 1983 action are the same. That being so, common sense seems to me to argue in favour of granting leave. Use of the documents in the 1983 action is, as I have held, outside the scope of the implied undertaking given as a term of the discovery in the 1981 action. But it is not inconsistent with the broad purpose for which that discovery was given. Whitford J. in the *Halcon* case [1979] R.P.C. 97, 109-110 suggested that the furtherance of a private interest could not justify the grant of leave to use discovered documents for the purpose of other proceedings and that some overriding public interest would normally be required. The 1983 action is certainly nothing more than the furtherance of a private interest. I can find no public interest which requires the plaintiffs to be permitted to use the documents for the purposes of the 1983 action. However, while I would respectfully accept Whitford J.'s proposition as a valuable general guide, it does not, in my view, assist in the unusual circumstances of the present case. Joinder of additional parties as a consequence of discovery is a common procedural occurrence. Neither I nor counsel have ever in practice heard of an objection to such joinder on the ground that discovered documents ought not to be used for such a purpose. If, instead of joinder, a new action is started, the substance of the situation does not seem to me relevantly different. I cannot see any sensible reason why the court should regard this new action as inappropriate for the use of the discovered documents. For these reasons in my judgment the plaintiffs ought to have leave to use the documents for the purposes of the 1983 action."

In support of her submission for a limited application of the *Riddick* principle, counsel for the plaintiff referred to a number of judicial statements *e.g.* those of (1) Stephenson L.J. in *Riddick's* case (at page 694 C-D); (2) Megaw L.J. in *Halcon's* case (at page 121, lines 1-29) where the *Riddick* principles was discussed in terms of its application to same parties. In my view, the scope of these statements is entirely to be expected in any judgment, as judges do not normally say more than is necessary for the purpose of the case. The decisions in *Halcon's* case, *Medway's* case, *the 1979 Church of Scientology* case, none of which was cited by counsel, are clearly against this submission. In *Sybron's* case, Scott J. rejected the very same argument raised by counsel for the plaintiff in these words:

"There are two additional matters that I would refer to. Mr. Brodie suggested that, since the implied undertaking was imposed for the benefit of the party giving discovery, the bank ought not to be allowed to inhibit use of the documents against third parties, the employees. I do not accept that. It is, in my view, an understandable and legitimate object of the bank that its discovered documents should not be used to base actions against its staff. The decision in the *Riddick* case [1977] Q.B. 881 would surely have been the same if the person sued for defamation had been the employee who drafted the memorandum rather than the employer itself. In considering whether the discovered documents could be used in the 1983 action no relevant distinction can, in my judgment, be drawn between the bank and the three employees as defendants to the 1983 action."

In the present case, the plaintiff is asserting that the defendant wrote the defamatory letter in his personal capacity and not as an employee of Interfood. In my view, even if this assertion is correct (which is extremely doubtful, even though I make no finding on it), this distinction has no relevance insofar as the application of the *Riddick* principle is concerned. The letter was written in connection with the business arrangements between Interfood, Khee San and the plaintiff.

I turn now to the next submission of counsel that the plaintiff ought to be given leave to continue this action. No sufficient reason has been given to justify the plaintiff's right, if any, to bring or continue this action should prevail against the public interest in getting at the truth. It was said that it would be fair to allow the plaintiffs to sue the defendants. How it would be fair was not explained to me except in terms that it would not be unfair to the defendant as he might have other defences to the action. The interest of the plaintiff in protecting his reputation is a private interest. There is no public interest in the pursuit of this action. No authority has been cited where a court has allowed a private interest to outweigh a public interest. In the *Halcon* case, Whitford J. said:

"However, these authorities to my mind, lead to this conclusion, that the use of a document disclosed in a proceeding in some other context, or even in another proceeding between the same parties in the same jurisdiction, is an abuse of process unless there are very strong grounds for making an exception to the general rule. It does, I think, emerge that some overriding public interest might be a good example, but not the mere furtherance of some private interest even where that private interest arises directly out of or is brought to light as a result of the discovery made."

In *Sybron's* case, Scott J. accepted Whitford J.'s proposition as a valuable general guide but nevertheless granted leave to the plaintiff to make use of the documents discovered in 1981 action for the 1983 action on the ground that, the cause of action being the same in both actions, the 1983 action was in essence a joinder of parties to the 1981 action and that such joinder, as a consequence of discovery was a common procedural occur-

rence. In my view, *Sybron's* case is not an example of a case where a private interest has, with the leave of the court, prevailed over a public interest. It was a case analogous to a joinder of parties who had conspired with the existing defendants to defraud the plaintiff, so that the giving of leave could be said to have come within the very terms of the *Riddick* principle. There was no question of a contest between a private interest and a public interest. Even if the right to sue in enforcement or protection of one's private rights is characterised as a public interest (see *Norwich Pharmacal Co. & Ors.* v. *Customs & Excise Commissioners* at page 171), I have to ask myself whether in this case the public interest would be better served by allowing the plaintiff to publicise the libels to the whole world so as to claim damages for loss of reputation. I am of the view that, even on this basis, the plaintiff's right to sue cannot outweigh the public interest in the proper administration of justice. In *The Distillers Co (Biochemicals) Ltd.* v. *Times*[12] Talbot J. granted an injunction against the London *Times* from publishing an article on thalidomide based on information obtained by claimants in discovery proceedings. On the question of competing interests, his Lordship held that the public interest in publishing the thalidomide story did not outweigh the public's interest in the proper administration of justice which required that the confidentiality of discovery documents be protected.

The plaintiff's case that he be given leave to proceed with his action therefore fails on two grounds: first, his private interest does not prevail against the public interest and secondly, if there were a public interest in his being allowed to litigate or enforce his rights in court, it would not override the public interest in full and frank disclosure in discovery proceedings. This is not a case where the defendant has wilfully, on the pretext of discovery, disclosed defamatory or scandalous statements made about the plaintiff which were totally irrelevant to the proceedings in which discovery was sought or obtained. If it were, there might be substance in the argument that there is a countervailing public interest in ensuring that parties do not abuse the proper administration of justice by malicious disclosure of defamatory or scandalous information which is irrelevant to the action under cover of the *Riddick* principle.

The exercise of the discretion of the court in granting leave to the plaintiff to continue this action may also be considered from a different perspective. I have referred to the *Norwich Pharmacal* case where the House of Lords held that the appellants, who were owners and licensees of a patent for a chemical compound, were entitled to obtain from the Commissioners the identities of importers of such compound in breach of the appellant's rights on the ground that he having been involved, albeit innocently and without incurring any personal liability, in the tortious act of the importers, came under a duty to assist one injured by those acts by giving him full information by way of discovery.

It is not necessary for me to examine the scope of the decision in the *Norwich Pharmacal* case and its relationship to the *Riddick* principle but, suppose that the plaintiff had, prior to commencing the Interfood action, commenced proceedings against Dato Yan for discovery of the defamatory letter, would the court have granted the order on the basis of that decision? It would appear not, for this was what Lord Reid said (at page 174):

> "But that does not mean, as the appellants contend, that discovery will be ordered against anyone who can give information as to the identity of a wrongdoer. There is absolutely no authority for that. A person injured in a road accident might know that a bystander had taken the number of the car which ran him down and have no other means of tracing the driver. Or a person might know that a particular person is in possession of a libellous letter which he has good reason to believe defames him but the author of which he cannot discover. I am satisfied that it would not be proper in either case to order discovery in order that the person who has suffered damage might be able to find and sue the wrongdoer. Neither authority, principle nor public policy would justify that."

Further, in the 1979 *Church of Scientology of California* case, the Court of Appeal allowed discovery of potentially defamatory letters written by third parties subject to conditions which ensured that the third parties could not be sued as a consequence.

The defendant therefore succeeds in this application. I order that the action to be struck out on the ground of abuse of process of court. The plaintiff will pay the costs of the defendant to be taxed.

Appeal allowed.

Solicitors: *Drew & Napier; Advani Hoo, Morris & Kumar.*